

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL JEFFERSON,

Plaintiff,

v.

MARGARET GILBERT, et al,

Defendants.

CASE NO. 19-5121 RJB-DWC

ORDER ADOPTING REPORT AND
RECOMMENDATION

THIS MATTER comes before the Court on the Report and Recommendation of U.S. Magistrate Judge David W. Christel. Dkt. 106. The Court has considered the Report and Recommendation, Plaintiff's objections, and the remaining file.

On November 12, 2020 the instant Report and Recommendation was filed, recommending that the Plaintiff's case be dismissed because of the Plaintiff's failure to exhaust all administrative remedies available to him. Dkt. 106. The Plaintiff filed objections to the Report and Recommendation. Dkts. 109, as amended 110.

The Report and Recommendation should be adopted (Dkt. 106) and the case dismissed. The Plaintiff's objections do not provide grounds to fail to adopt the Report and Recommendation. The Plaintiff's objections on the merits of his claims are not relevant to the issue before the Court: whether he properly exhausted his administrative remedies. The Plaintiff

1 acknowledged in his Objections that it took him 2 ½ years to file a grievance as to the loss of his
2 eye. His temporary inability to use his left eye (for a month) does not excuse his failure. As
3 stated in the Report and Recommendation, the Plaintiff's assertion, that he couldn't file a
4 grievance about this incident because he was told "no," is belied by the record which
5 demonstrates that he did file grievances about other issues, before and after the event. His
6 assertion that the loss of his eye is a continuing constitutional violation is unpersuasive because it
7 would render the time limits imposed by regulation and statute a nullity. Under this theory, he
8 could file a grievance at any time forever.


9 The Plaintiff's reference to various discovery issues, general dislike of the use of
10 affidavits and declarations in a motion for summary judgment, and claim that there is a potential
11 conflict of interest "in regards [sic] to attorneys and a person in the court" are all equally
12 unavailing. The Report and Recommendation (Dkt. 106) should be adopted.

13 It is **ORDERED** that:

- 14 • The Report and Recommendation (Dkt. 106) **IS ADOPTED**; and
- 15 • This case **IS DISMISSED WITH PREJUDICE**.

16 The Clerk is directed to send uncertified copies of this Order to U.S. Magistrate Judge
17 David W. Christel, all counsel of record and to any party appearing *pro se* at said party's last
18 known address.

19 Dated this 21st day of December, 2020.

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21 ROBERT J. BRYAN
22 United States District Judge
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